

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
WRIT PETITION NO. 2192 OF 2002

Date of Judgment : 5th October, 2005

For Approval and Signature :

The Honourable Mr. Justice S.K. Shah :

1. Whether Reporters of Local Papers may be allowed to see the Judgment?
2. To be referred to the Reporters or not?
3. Whether Their Lordships wish to see the fair copy of the Judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any Order made thereunder?
5. Whether it is to be circulated to the Civil Judges ?
6. Whether the case involves an important question of law and whether a copy of the Judgment should be sent to Nagpur, Goa and Aurangabad office?

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2192 OF 2002

HEMANT MANOHAR DESHPANDE,
2, CHANGDEV SADAN, NEAR
MADHAVI BUNGALOW, RAJAJI
PATH, DOMBIVALI(E), THANE,
PIN 421 201

... PETITIONER.

VERSUS

1. M/S. SSSLUMBERGER ASIA
SERVICES LTD., A COMPANY
INCORPORATED UNDER THE COM
PANIES ACT, 1956, HAVING
ITS REGISTERED OFFICE
AT N.S.C. COMPLEX, WESTERN
EXPRESS HIGHWAY, GOREGAON(E)
MUMBAI 400 063.

2. SHRI S.K.SHALGAONKAR,
PRESIDING OFFICER, XITH LABOUR
COURT, BANDRA, MUMBAI.

...RESPONDENTS.

MR. M.D.NAGLE FOR THE PETITIONER.
S.K.TALSNIA ALONGWITH R.N.SALGAONKAR I/B.
SALGAONKAR & CO. FOR THE RESPONDENT NO.1.

CORAM : S.K.SHAH, J.
DATE : October 5, 2005.

JUDGMENT

1. Heard.

2. This petition is directed against the Award passed by the Presiding Officer of Mumbai, Eleventh Labour Court, Mumbai in Reference No.(D.A.) No. 1279 of 1995, whereby the reference was allowed in part and the employer-respondent was directed to pay to the Petitioner- workmen compensation,

equivalent to 33 months wages for loss of future employment, by way of deposit in the Court, within a month from the date of publication of the Award.

3. The brief facts, giving rise to this petition are as under :-

. The Petitioner was appointed with the Respondent NO.1 as a Junior Operator/Field Operator with effect from 1.11.1992. The Respondent NO.1 Company is engaged in business of off-shore services i.e. Wire line and testing of oil fields and other related activities. The Petitioner was required to work as Junior Operator on the off-shore. The services of the Petitioner were confirmed on 1.5.1993. While on duty, on 25.5.1993, the Petitioner started experiencing severe pain in his back and, therefore, approached the Rig Medical Officer at the ONGC. The Petitioner was thereafter advised by his superiors to approach his family doctor for further treatment. On 31.5.1993, the Petitioner was informed on telephone to go to Company's doctor i.e. Dr. Anil Mehra on 1st June, 1993. Accordingly, the Petitioner was examined by Dr. Anil Mehra on several occasions and, ultimately, referred the petitioner to Dr. Vishwas Raut, the Orthopedic Surgeon. Dr. Vishwas Raut examined the Petitioner and advised medicines and also advised

for ten days strict bed rest and advised to undergo 10 sittings of Physio-Therapy . Company's doctor, while declaring the petitioner fit, advised the Respondent- Company to provide to the Petitioner, light duties for speedy recovery.

4. On 9.6.1993, Dr. Vishwas Raut advised the petitioner to do light duty for a period of three months at least. As such, from October, 1993 the Petitioner worked and performed his normal duty up to 5th December, 1993.

5. On 9.12.1994 the Petitioner was served with termination letter, terminating his services with immediate effect. The termination letter mentions that the petitioner was appointed as an Junior Operator to do the job of the field operator off-shore and the Petitioner's job was to assist the Logging Engineer in the lifting and handling, maintenance and rigging up and down of the Company's downhole wireline tools. It is further mentioned that the Petitioner reported that he has back pains and accordingly he was medically examined. The termination letter further mentions that as the Petitioner remained without any work for one year, the Company could not afford to continue the petitioner to go on paying wages without any work. It also mentions that the Petitioner had submitted the medical certificate

alongwith his letter, wherein the Petitioner once again requested that he still continue to suffer from the back pains and needed rest and unable to go to rigs and do his normal duties because of his ill health. The termination letter further mentions that therefore, the Petitioners services were terminated with immediate effect and the retrenching compensation and one months' salary in lieu of notice period, were being paid by the Cheque enclosed to the letter of termination.

6. The Petitioner thereafter addressed a letter, dated 10.12.1994 to the Company, mentioning therein that he was the protected workmen and sanction to terminate his services was not obtained; that he had worked in various departments, such as stores, Clerical Work, Liaison work related with various departments, H.S.E., Helbase, Printing, Painting etc. since 25th December, 1993 and contended that he was not merely appointed as a Junior Operator; that no Domestic Enquiry was held and the termination of his services was illegal and bad and by that letter, called upon the Respondent No.1 to reinstate him in the services.

7. The letter was replied by the Respondent NO.1 - Company by reply, dated 20th December, 1994, refuting all the allegations made in the letter of

the petitioner and, specifically contending that the services of the petitioner came to be terminated by way of retrenchment on account of ill-health of the Petitioner and incapacity of the petitioner to perform his duties as Junior Operator/ Field Operator.

8. The Petitioner, therefore, filed a reference No. IDA 1279 of 1995 for a declaration that the termination was illegal, with a prayer to reinstate him and for a direction to pay the compensation.

9. The Respondent-Company filed Written Statement in the said reference.

10. The Labour Court, after recording the evidence of the parties and on consideration thereof, held that the termination is legal and proper but did not approve of the payment of Rs. 3152/- as retrenchment compensation, in lieu of one months' salary, which the petitioner never obtained and directed that the Respondent NO 1 - Company to pay compensation, equivalent to 33 months wages for loss of future employment. It is this Order, which is impugned in this Writ Petition.

11. The learned Counsel for the Petitioner contends that the termination was a stigma and

therefore, it was bad as the termination was effected without any Domestic Enquiry having been made. He further submits that the Petitioner was a protected workmen and his termination without obtaining permission from the Court was bad. He also contended that the Petitioner was, in fact, fit to work. He also submits that the Respondent could have been provided with other work, which he had discharged in the departments, such as stores, clerical work, H.S.E.F work, Helbase, Printing Painting etc. He, therefore, submits that the Respondent could have provided him the said work and should not have terminated his services.

12. As against this, the learned Counsel for the Respondent - Company submits that the termination of the Petitioner's services was only on the ground of his ill health, which did not amount to casting any stigma and it only was by way of retrenchment of his services, as contemplated under Section 2 (oo) (c) of the Industrial Disputes Act, 1947. The learned Counsel further submits that no Disciplinary Enquiry was necessary. He submits that there is evidence to show that the Petitioner was unable to discharge his duties as Junior Operator/ Field Operator and that sufficient opportunity was given to him to get himself fit for the purpose of his job.

13. I have gone through the Award passed by the labour Court and considered the submissions of both the learned Counsel.

14. It is undisputed that the Petitioner was appointed as Junior Operator/ Field Operator. The said employment involved the work to be performed on the Rig on offshore and the nature of the work was to assist the Logging Engineer i.e. the lifting and handling, maintenance and rigging up and down of the Company's downhole wireline tools. It is further undisputed that the Petitioner was unable to perform this work because of his back pains. The Labour Court clearly observed that right from 1st November, 1992 the Petitioner had put in 18 months of services, during which period except 39 days work on Rigs on offshore in high seas, he was provided other work for speedy recovery, and the said workman was all the while accommodated at base with its Head quarter office of the Company by giving him the light work in order to see whether the petitioner could recoupe from the said illness and could go on in high seas for his regular normal job as Field Operator on the Rigs. But the Petitioner could not go and perform his duties because of his back pains. It is further contended by the Respondent that the Petitioner had himself produced a certificate, dated, 4th December, 1994 issued by

Dr. Jayant Gokhale, dated 2.12.1994 suggesting that due to the work involving physical pain, his present spinal condition may require surgical intervention and he be allowed to do light duty and be refrained from doing forward bending, lifting of heavy objects, taking awkward postures etc. The advice given by the doctor was that the Petitioner should do light duty and try to refrain himself from above mentioned activities.

15. In view of this evidence the order of termination came to be passed on 9.12.1994. It was pleaded that the Petitioner was unable to perform his duty as Field Operator or Junior Operator assisting Logging Engineer, under which he was employed. Hence, on this count of ill-health of the Petitioner that the Petitioner's services came to be terminated. This position has not been disputed at all. The fact that the Petitioner was suffering from back pain and was unable to perform his normal duty is not in dispute. On the contrary, on the request of the Petitioner himself, all the while given light work for the larger period of service of 18 months, during which period he worked in high seas only for 39 days.

16. The submission that the termination amounted to stigma on the petitioner is, obviously, misplaced. The termination letter itself clearly

mentions that his services were being terminated on account of ill-health and the termination was effected without casting any stigma on him.

17. The contentions raised on behalf of the Petitioner that the Petitioner was a protected workman and his services could not have been terminated without the permission of the Industrial Court, is totally misconceived. That was the contention raised by him to the Notice/letter dated 10th December, 1994, addressed by him to the Company. But that contention was not further taken by him in the evidence/ statement led before the Labour Court. It is apparent that no proceeding was pending when the termination notice came to be served on the petitioner.

18. The learned Counsel for the Petitioner vehemently submitted that the case of the Petitioner be considered for re-employment. However, that also is not possible after lapse of about 11 years. Under such circumstances, the Writ Petition deserves to be dismissed. Hence, the Order :-

ORDER

1. The Writ Petition is dismissed.
2. Rule Discharged.

3. The Petitioner would be at liberty to withdraw the amount of compensation, deposited by the Respondent in the Lower Court.

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[S.K.Shah, J.]